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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of)
)
Advanced Television Systems) MM Docket No. 87-268
and Their Impact Upon the)
Existing Television Broadcast)
Service)

**OPPOSITION OF POST-NEWSWEEK STATIONS TO
PETITION FOR PARTIAL RECONSIDERATION
SUBMITTED BY PAXSON COMMUNICATIONS CORPORATION**

POST-NEWSWEEK STATIONS

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To: The Commission

**OPPOSITION OF POST-NEWSWEEK STATIONS TO
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Post-Newsweek Stations of Florida, Inc. ("Post-Newsweek"), is the licensee of WPLG(TV), Channel 10, Miami, Florida. Pursuant to Section 1.429(f) of the Commission's rules, Post-Newsweek submits this Opposition to the *Petition for Partial Reconsideration* ("*Petition*") filed by Paxson Communications Corporation ("Paxson") on April 20, 1998, in the above-captioned digital television ("DTV") proceeding.

Paxson is the licensee of WPXM-TV, Channel 35, Miami, which has been assigned DTV Channel 26. Paxson has come forward at this late stage, over twelve months after the *Sixth Report and Order* was released, after six opportunities to file pleadings responsive to that *Report and Order*, to request that WPXM-TV be assigned DTV Channel 3 and be permitted to relocate to the Hollywood antenna farm (a site change of more than five kilometers). Paxson has had more than adequate opportunity to make this request in the normal pleading cycle, and its *Petition* should be denied as

not timely filed. Further, the Commission has made it plain that changes of the kind Paxson has requested will not be entertained on reconsideration, but should be addressed on a case-by-case basis in the petition for rulemaking or application process.

I. Paxson's Late-Filed Request Should Be Denied On Procedural Grounds.

Paxson's *Petition* raises issues that could, and thus should, have been raised earlier in the digital television proceeding. The *Sixth Report and Order* in this proceeding was released on April 21, 1997. Petitions for reconsideration were due on June 13, 1997. Paxson submitted such a petition, seeking sweeping changes to the methodology and policy choices underlying the *Sixth Report and Order*. Due to the delayed release of OET Bulletin No. 69, which provides guidance on the implementation and use of Longley-Rice methodology for evaluating coverage and interference, the Commission provided a second filing date of August 22, 1997, for supplemental reconsideration petitions. Paxson filed a supplemental petition, requesting specific relief with respect to channel assignments of four Paxson stations. WPXM was not one of them. Indeed, neither Paxson, nor Channel 35 of Miami (the prior licensee of the station), filed comments, reply comments, a petition for reconsideration, or a supplemental petition for reconsideration, seeking a change in WPXM's DTV assignment or site.^{1/}

Paxson has offered no explanation for its eleventh-hour request for a different DTV channel and site for the Miami station or for its failure to request this relief at the

^{1/} Prior to February 20, 1998, WPXM was known as WCTD. Although Paxson acquired the license for the station on December 12, 1997, it has been operating the station pursuant to an LMA since 1994.

initial reconsideration stage. It is well established that reconsideration is appropriate where the petitioner failed to raise the matter earlier only if the petitioner shows a material error or omission in the original order, or raises additional facts not known or not existing until after the petitioner's last opportunity to present such matters.^{2/} Paxson cannot plausibly claim that the facts underlying its eleventh-hour request were unknown in August of 1997. Under well-established Commission rules and precedent, its *Petition* must be denied as filed out-of-time.

II. The Commission Has Declined To Grant Precisely The Kind Of Relief Requested By Paxson On Reconsideration.

Paxson concedes that its two requests (for a site change and a channel change) "would appear to be ungrantable on reconsideration" in light of the Commission's stated policy of not entertaining relocation requests on reconsideration and the fact that use of DTV Channel 3 at WPXM-TV's present location would create unacceptable interference. *Petition* at 2-3. Although Paxson casts the two as "interdependent requests," *id.* at 3, it has offered no reason or legal authority for the Commission to deviate from established policy with respect to the site and channel change requests (whether considered separately or together).

The Commission's decision not to entertain site change requests on reconsideration is sensible. While it was necessary and appropriate for the Commission to revisit allotments and assignments in order to eliminate unexpected interference, to

^{2/} See 47 C.F.R. § 1.429; *WWIZ, Inc.*, 37 F.C.C. 685, 686 (1964), *aff'd sub. nom.*, *Lorain Journal Co. v. Federal Communications Commission*, 351 F.2d 824 (D.C. Cir. 1965), *cert. denied*, 383 U.S. 967 (1966).

reduce problems for low power television operations, and to ensure coverage area replication, individual requests for sites changes were not properly considered as part of the DTV allotment and assignment proceeding in the first instance, and should not be entertained on reconsideration -- and certainly not now, after the reconsideration period has closed.^{3/} By the same token, requests for channel changes that hinge on site changes are not appropriately entertained on reconsideration, let alone on further reconsideration.

In the first round of reconsideration, a number of parties requested that the Commission assign them different DTV channels, change their transmitter sites, or otherwise change their facilities. *See Recon. Order* ¶¶ 189-191. The Commission uniformly denied site change requests, noting that "such requests should be handled under the DTV allotment modification procedures provided for in the rules and not as a matter for reconsideration." *See, e.g., id.* ¶ 384 (disposing of site change requests submitted by HSN Inc., Jacksonville Educational Broadcasting Inc., and Pensacola Junior College).^{4/} The Commission further noted that new channel allotments and assignments should be resolved through petitions for rulemaking. *See id.* ¶ 187. Moreover, because Paxson seeks *both* a site change *and* a channel change, because the

^{3/} *See* Memorandum Opinion and Order on Reconsideration of the Sixth Report and Order, In the Matter of Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service (adopted March 20, 1998), 63 Fed. Reg. 13546 ("*Recon. Order*"), ¶¶ 189, 190.

^{4/} The Commission's procedures would be suspect on fairness grounds were it to grant Paxson's late-filed request, after denying similar timely-filed requests for site changes.

request involves channel 3 in a community where channel 4 is currently used,^{5/} and because the request would create additional interference to existing NTSC operations,^{6/} its request is particularly inappropriate at this further reconsideration stage.

III. Conclusion

The rule that reconsideration is inappropriate except under limited circumstances reflects the fact that protracted public notice-and-comment rulemakings provide more than adequate opportunity for individual requests to be considered and addressed by the Commission. Indeed, the *Sixth Report and Order* was issued more than a year ago, and there has been more than adequate opportunity for comment since. Consideration of individual requests like Paxson's on a piecemeal "further reconsideration" basis would impose a heavy burden on the Commission and on the public. Paxson's unexplained untimely filing would delay the Commission's conclusion of the digital television proceeding, introduce additional uncertainty for other Miami licensees, and slow the

^{5/} WFOR-TV operates on Channel 4 out of Miami, FL. Assignment of channels 3 and 4 in the same community raises the potential of interference with cable terminal devices (set-top boxes) and videocassette recorders. See Second Further Notice of Proposed Rulemaking, In the Matter of Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service, 7 F.C.C.R. 5376, 5384 (1992). Paxson has offered no reason for the Commission to deviate from its policy of "avoid[ing] the allotment of channels 3 and 4 in the same market." *Sixth Report and Order* ¶ 151.

^{6/} Paxson notes, *Petition* at 5, that its proposed channel and site change would cause additional interference to WEDU(TV), Tampa, FL.

rollout of digital television for the public.²⁷ The request is untimely and the requested relief inappropriate on reconsideration, and the *Petition* should be summarily denied.

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²⁷ The Commission has itself stated, in papers recently filed with the U.S. Court of Appeals for the District of Columbia Circuit in response to petitions for review of the *Sixth Report and Order*, that the entire DTV Table is "of a piece." One channel change can have ripple effects throughout large portions of the table, and a change in policy can affect the entire table.

CERTIFICATE OF SERVICE

I, Erika F. King, hereby certify that a copy of the foregoing **Opposition Of Post-Newsweek Stations To Petition For Partial Reconsideration Submitted By Paxson Communications Corporation**, was sent this 26th day of May, 1998, by hand-delivery to the following:

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DATED: May 26, 1998